

The Honorable \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

T-MOBILE WEST LLC and  
INDEPENDENT TOWERS HOLDINGS,  
LLC.,

Civil Action No.:

Plaintiffs,

v.

THE CITY OF MEDINA, WASHINGTON,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND EXPEDITED TREATMENT**

For its Complaint against Defendant the City of Medina, Washington (the "City"),  
Plaintiffs T-Mobile West LLC ("T-Mobile") and Independent Towers Holdings, LLC  
("Independent Towers") (collectively "Plaintiffs"), by their undersigned attorneys, upon  
knowledge as to their own actions and dealings and upon information and belief as to  
Defendant and its actions, alleges as follows:

COMPLAINT FOR DECLARATORY &  
INJUNCTIVE RELIEF ( ) - 1

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### **Nature of the Action**

This action arises out of the unlawful denial by the City of Plaintiffs' application to construct and operate a wireless telecommunications facility in the City in a portion of Fairweather Park adjacent to State Route (SR) 520. A primary purpose of the application is to provide a permanent wireless facility location for Independent Towers' lessee, T-Mobile, to replace T-Mobile's previously authorized wireless telecommunications facility adjacent to Fairweather Park that T-Mobile was forced to relocate due to highway construction. The City's denial is not supported by substantial evidence contained in a written record and effectively prohibits personal wireless service in the vicinity of the proposed facility. Accordingly, the City's denial of Plaintiffs' application violates the federal Communications Act, as amended, 47 U.S.C. § 332(c)(7) (the "Communications Act" or "Act"). Plaintiffs seek an order from this Court directing the City to grant Plaintiffs' application for the proposed facility in accordance with Plaintiffs' rights under the Communications Act.

Plaintiffs request expedited treatment of this complaint pursuant to 47 U.S.C. § 332(c)(7)(b)(v).

### **Parties**

1. Plaintiff T-Mobile is a Delaware limited liability company with its principal place of business in Bellevue, Washington. T-Mobile is a wholly owned subsidiary of T-Mobile USA, Inc., a Delaware corporation with its principal place of business in Bellevue, Washington. T-Mobile and T-Mobile USA, Inc. are registered to do business in the State of Washington with offices at 12920 SE 38th Street, Bellevue, WA 98006. T-Mobile is the operating entity for T-Mobile USA, Inc. in the western region of the United States, including the State of Washington. T-Mobile uses licenses issued by the FCC to T-Mobile USA, Inc.,

3. Defendant the City of Medina is a council-manager governed, non-charter code city existing under the laws of the State of Washington and located in the Western District of Washington.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because of the existence of federal questions arising under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Communications Act”). The Court has authority to issue declaratory judgment relief pursuant to 28 U.S.C. § 2201(a).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to this action occurred in King County in the Western District of Washington.

**Statement of Facts**

**Federal Statutory Control Of Wireless Siting**

6. The Communications Act governs federal, state and local government regulation of the siting of personal wireless service facilities such as the ones at issue here. 47 U.S.C. § 332(c)(7)(B).

7. The Communications Act further provides that any person adversely affected by a state or local government's act, or failure to act, that is inconsistent with § 332(c)(7) of the Communications Act may seek review in the federal courts, and that the courts shall hear and decide the action on an expedited basis. 47 U.S.C. § 332(c)(7)(B)(v).

**The Wireless Communications Service Industry**

8. T-Mobile provides commercial mobile radio services, personal and advanced wireless services, as well as other telecommunications services, as those terms are defined under federal law, in the State of Washington, including in the City.

9. T-Mobile is seeking to facilitate the maintenance and development of a wireless telecommunications network in keeping with the goals of the Communications Act. T-Mobile, as the operating entity for T-Mobile USA, Inc. uses licenses issued by the FCC pursuant to 47 U.S.C. § 151 to provide wireless service in the City.

10. Independent Towers constructs, owns, and manages wireless communications facilities in Washington and elsewhere in the country. Independent Towers leases space on its facilities to national and regional wireless carriers who provide personal and advanced wireless services, as well as other telecommunications services, as those terms are defined under federal law, to end-user wireless consumers. In providing this valuable service to wireless carriers,

1 Independent Towers is facilitating the development and deployment of advanced wireless and  
2 broadband connectivity consistent with the goals of the Communications Act.

3 11. Section 151 of the Communications Act establishes a national policy to “make  
4 available, so far as possible, to all people of the United States, without discrimination . . . a  
5 rapid, efficient, Nation-wide, and world-wide wire and radio communication service with  
6 adequate facilities at reasonable charges, for the purpose of national defense, [and] for the  
7 purpose of promoting safety of life and property through the use of wire and radio  
8 communications.” 47 U.S.C. §151.

9 12. To meet these policy goals, T-Mobile seeks to provide myriad wireless services  
10 to local businesses, public safety entities and the general public.

11 13. Moreover, to advance the national policies enumerated under 47 U.S.C. § 151  
12 and repeatedly reiterated by the FCC, Independent Towers constructs towers and other wireless  
13 facilities that allow wireless carriers, such as T-Mobile, to create and maintain a network of  
14 digital “cell sites,” each of which consists of antennas and related electronic communications  
15 equipment designed to send and receive radio signals.

16 14. To provide reliable service to a user, coverage from cell sites must overlap in a  
17 grid pattern resembling a honeycomb. If Independent Towers is unable to construct a cell site  
18 within a specific geographic area, the wireless carriers it serves, including T-Mobile in this  
19 case, will not be able to provide service to the consumers within that area.

20 15. To determine where a new wireless facility is required, radio frequency engineers  
21 use various techniques, such as sophisticated computer programs and field testing, to complete  
22 a propagation study, which shows where cell sites need to be located in order to provide  
23 service. The propagation study also takes into account the topography of the land, the coverage

1 boundaries of neighboring cell sites and other factors. For a wireless network to perform, cell  
2 sites must be located, constructed and operated so that reliable service can be achieved. If there  
3 is no functioning cell site within a given area, there will be no service for customers within that  
4 area, and customers who live or travel in the area will experience an unacceptable level of  
5 dropped calls and call connection failures.

### 6 **The Proposed Facility & Application Process**

7 16. In October 2002, T-Mobile, which was then known as VoiceStream, sought and  
8 received a permit for a wireless facility adjacent to the southwest corner of Fairweather Park on  
9 the north side of SR 520 next to the Evergreen Point Road overpass. The site was located in  
10 the SR-520 highway right of way.

11 17. Pursuant to that permit, in 2005, T-Mobile constructed its wireless facility on a  
12 55 foot tower. That facility was designed to provide outdoor and in-vehicle personal wireless  
13 service in the surrounding residential areas to the north and south of SR 520 and to people  
14 travelling along SR-520, including on the Evergreen Point Floating Bridge.

15 18. In 2011, the Washington State Department of Transportation forced T-Mobile to  
16 remove that permitted facility to accommodate new highway improvements at the SR-520  
17 Evergreen Point Road overpass.

18 19. Thus, T-Mobile reluctantly relocated their antennas and equipment to a  
19 temporary pole on the south side of SR-520 in the state highway right of way adjacent to  
20 Evergreen Point Road, to accommodate the highway construction.

21 20. Subsequently, in 2012, Independent Towers and T-Mobile sought a temporary  
22 use permit for a second T-Mobile temporary replacement facility. This second temporary site  
23

1 was located back on the north side of SR-520 in Fairweather Park, approximately 108 feet from  
2 the originally permitted facility site.

3 21. The City has been involved in the relocation process and the approval of the two  
4 temporary facilities as well as the permit process for the proposed permanent relocation facility.

5 22. The facility at issue in this case is proposed to be an 80 foot stealth tower  
6 designed as a light pole, with all antennas and cables concealed within the structure, located in  
7 Fairweather Park on the north side of SR-520, adjacent to the SR-520 right of way (the  
8 "Proposed Facility"). The Proposed Facility would be located only 158 feet from the site of the  
9 originally permitted permanent site, which site has now been built over by WSDOT.

10 23. The Proposed Facility serves at least two significant purposes. First, the current  
11 temporary facility has expired and if the Proposed Facility is denied, T-Mobile will lose all  
12 coverage and service from this area. Second, due to changes beyond T-Mobile's control, even  
13 the original 55 foot T-Mobile facility leaves a current significant gap in service. The Proposed  
14 Facility must both replace coverage provided by the originally-permitted T-Mobile wireless  
15 facility and provide additional coverage to cure the significant gap that now exists even if the  
16 original coverage were reinstated.

17 24. When the original use permit was granted in 2002, the site was necessary to  
18 resolve a significant gap in wireless service by providing outdoor and in-vehicle coverage to  
19 the residential areas immediately to the north and south of SR-520 and to cars travelling on SR-  
20 520 and the Evergreen Bridge.

21 25. Since 2002, the trees in the area the original site was designed to serve have  
22 grown, causing a decrease in coverage the original 55 foot tower could provide due to  
23 additional attenuation of the signal strength by the tree cover.



1           26. The trees in the area around Fairweather Park are in excess of 80 feet.

2           27. In addition, since 2002, consumer demand for, and dependence on, wireless  
3 service has skyrocketed. *See, e.g., Riley v. California*, Nos. 13-132, 13-212, 2014 WL  
4 2864483, at \*9 (U.S. June 25, 2014) (noting that modern cell phones “are now such a pervasive  
5 and insistent part of daily life that the proverbial visitor from Mars might conclude that they  
6 were an important feature of human anatomy”); *Acceleration of Broadband Deployment by*  
7 *Improving Wireless Facilities Siting Policies*, Notice of Proposed Rulemaking, 28 FCC Rcd.  
8 14238, ¶ 2 (2013). For many Americans, wireless devices have become an indispensable  
9 replacement for traditional landline telephones. *See* Centers for Disease Control, Wireless  
10 Substitution: Early Release of Estimates from the National Health Interview Survey, July –  
11 December 2013 at 1 (Rel. July 2014) (reporting that 41% of all households have eliminated  
12 wireline telephone service and now rely solely on wireless service). Even when Americans  
13 maintain both types of telephone service, Americans are opting increasingly to use wireless  
14 devices over their landline telephones.

15           28. As a result, while outdoor and in-vehicle coverage may have been sufficient in  
16 2002, today consumers demand that wireless providers like T-Mobile offer reliable service in  
17 their homes and workplaces. If T-Mobile cannot provide signal strength coverage and  
18 sufficient capacity to provide service inside homes, it is effectively not providing service from  
19 the perspective of consumers.

20           29. Based upon research and analysis by radio frequency engineers, T-Mobile  
21 determined that even were the original VoiceStream facility still in place, T-Mobile would have  
22 a significant gap in its ability to provide reliable in building service in the residential areas to  
23 the north and south of SR-520 in the Evergreen Point area and in-vehicle coverage on the



1 Evergreen Point Floating Bridge, due to the growth in tree heights since 2002 and the technical  
2 and consumer demand changes that have occurred in the ensuing years .

3 30. The average daily traffic across the SR-520 floating bridge is 62,223 vehicles per  
4 day.

5 31. Moreover, unless the Proposed Facility is approved, thereby replacing the  
6 originally permitted and temporary T-Mobile facilities, T-Mobile will lose the coverage it has  
7 provided to consumers for the past ten years in the Evergreen Point area and to travelers on SR-  
8 520 – coverage that, in 2002, the City deemed necessary when it granted the original permit.

9 32. Thus, the denial of the Proposed Facility not only prohibits T-Mobile from filling  
10 a significant gap in its existing service, but increases that gap by eliminating coverage that has  
11 been provided for the past ten years.

12 33. There are no existing structures on which T-Mobile could install a wireless  
13 facility that would remedy this significant gap in coverage.

14 34. Under the City's Code limitations there are no other locations in the City that  
15 would allow a tower of 80' to be constructed to remedy this significant gap in T-Mobile's  
16 coverage.

17 35. The Medina City Council tentatively approved a lease with Independent Towers  
18 at their March 14, 2011 regular meeting, to rent the portion of Fairweather Park that will be  
19 used for the construction, occupation and maintenance of the Proposed Facility.

20 36. After further City Council consideration at their June 13, 2011 regular meeting,  
21 the City manager signed the lease agreement with Independent Towers.

22 37. On September 25, 2013, Independent Towers submitted an application for a  
23 Special Use Permit and for two variances (one from the City's 500 foot setback from

1 residential property lines and one from the City's undergrounding requirement) necessary for  
2 approval of the Proposed Facility (the "Application").

3 38. Revisions to the Application were submitted by Independent Towers on January  
4 29, 2014 and April 20, 2014.

5 39. Pursuant to City Code 20.80.100(F), on April 21, 2014 the City determined that  
6 the Application was complete.

7 40. Pursuant to the Medina City Code Section 20.37.060(A), wireless facilities are  
8 permitted in Fairweather Park as long as they are in non-forested areas and adjacent to the state  
9 highway right of way.

10 41. Medina City Code Section 20.37.070(B)(3) allows a wireless facility to be 80  
11 feet tall if four criteria are met: (1) if it is in accordance Code Section 20.37.060(A); (2) the  
12 height is the minimum necessary to avoid a significant gap in coverage on the SR-520 floating  
13 bridge; (3) the height supports future co-location on the support structure pursuant to Code  
14 section 20.37.110; and (4) all other applicable provisions of the wireless chapter of the City  
15 Code are followed.

16 42. On July 9, 2014, the City's Staff issued their report recommending approval of  
17 the Proposed Facility and concluding that the Application met all necessary requirements of the  
18 City's Code.

19 43. Among other things, the City Staff's report concluded that with conditions  
20 recommended by the City Staff: the Proposed Facility qualifies as a permitted location under  
21 Code Section 20.37.060(A); the Proposed Facility meets the criteria set forth in Code Section  
22 20.37.070(B)(3); the Proposed Facility meets the criteria required to demonstrate a need for the  
23 facility set forth in City Code Section 20.37.140(C)(1); the Proposed Facility complies with the

1 least intrusive design requirement of City Code Section 20.37.140(B)(2); the Proposed Facility  
 2 will comply with the goals and policies set forth in the City's comprehensive plan; the  
 3 Proposed Facility has been designed to minimize adverse effects on neighboring properties; the  
 4 Proposed Facility is consistent with applicable special use provisions of the City Code; the  
 5 Proposed Facility is consistent with all applicable zoning and development standards; the  
 6 Proposed Facility will not have a materially detrimental effect on neighboring properties.

7 44. Hearing on the Application was held before the Hearing Examiner for the City of  
 8 Medina on July 16, 2014.

9 45. At the July 16<sup>th</sup> hearing Independent Towers presented documentary and  
 10 testimonial evidence demonstrating the need for the Proposed Facility.

11 46. At the July 16<sup>th</sup> hearing Independent Towers presented documentary and  
 12 testimonial evidence demonstrating that the Proposed Facility was designed to be the least  
 13 intrusive on the surrounding environment.

14 47. At the July 16<sup>th</sup> hearing Independent Towers presented substantial documentary  
 15 and testimonial evidence demonstrating that it complied with all the requirements of the City  
 16 Code.

17 48. The opposition to the Proposed Facility alleged that the Plaintiffs and the City  
 18 Staff were wrong and that there was no need for the facility.

19 49. Among other things, that opposition failed to account for the loss in coverage  
 20 that will result from the denial of the Proposed Facility and the removal of the existing  
 21 temporary facility.

22 50. At the close of the hearing, the Hearing Examiner indicated that he would review  
 23 the record materials and issue a written decision.

1           51. On August 25, 2014, the City of Medina issued the Hearing Examiner's written  
2 decision denying the Application for the Proposed Facility.

3           52. The City's denial based upon the Hearing Examiner's decision is not supported  
4 by substantial evidence contained in the written record.

5           53. The Hearing Examiner's decision ignored material evidence in the record  
6 regarding the need for the Proposed Facility.

7           54. On September 8, 2014, Plaintiffs sought reconsideration of the City's denial  
8 based, in part, on erroneous findings made by the Hearing Examiner. On September 15, 2014,  
9 the opponents of the proposal moved to dismiss Plaintiffs' reconsideration request, claiming  
10 that the date of issuance of the denial decision was August 21, 2014, and that the  
11 reconsideration request was untimely.

12           55. On September 17, 2014, a hearing was held on Plaintiffs' motion for  
13 reconsideration and on the motion to dismiss, subject to the acceptance of further briefing on  
14 the motions. As of the filing of this Complaint, no determination on either motion has been  
15 made. Nevertheless, out of an abundance of caution that the Hearing Examiner's denial  
16 decision is determined to be the final decision of the City, Plaintiffs have filed this action.

17           56. Pursuant to 47 U.S.C. § 332(c)(7)(B)(v), "Any person adversely affected by any  
18 final action or failure to act by a State or local government or any instrumentality thereof that is  
19 inconsistent with this subparagraph may, within 30 days after such action or failure to act,  
20 commence an action in any court of competent jurisdiction. The court shall hear and decide  
21 such action on an expedited basis."

22           57. This action is timely filed.  
23

**COUNT I**

**(Violation of 47 U.S.C. § 332(c)(7)(B)(iii) - Substantial Evidence)**

58. Plaintiffs incorporate by reference and reallege the foregoing factual allegations in paragraphs 1 through 57 as if fully set forth herein.

59. Pursuant to 47 U.S.C. § 332(c)(7)(B)(iii), “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.”

60. The Application with respect to the Proposed Facility satisfied all of the criteria set forth in the City’s Code to install a wireless communications facility in the proposed location.

61. The City’s Zoning Staff recommended approval of the Application with respect to the Proposed Facility.

62. At the July 16, 2014 hearing Plaintiffs presented evidence regarding the need for the Proposed Facility and that the Proposed Facility complied with all City requirements.

63. In his written decision, the City’s Hearing Examiner disregarded the recommendations of the City’s staff and the record evidence and denied the Application for the Proposed Facility.

64. The City’s denial ignores material record evidence and misstates material facts, and is not supported by substantial evidence contained in the written record.

65. Consequently, the City’s action is in violation of, and preempted by, Section 332(c)(7)(B)(iii) of the Communications Act, and should be set aside and enjoined by the Court

1 on that basis. Further, this Court should exercise its power to issue an order directing the City  
2 to approve the Application for the Proposed Facility.

3 **COUNT II**  
4 **(Violation of 47 U.S.C. § 332(c)(7)(b)(i)(II) – Effective Prohibition)**

5 66. Plaintiffs incorporate by reference and reallege the foregoing factual allegations  
6 in paragraphs 1 through 65 as if fully set forth herein.

7 67. Pursuant to 47 U.S.C. § 332(c)(7)(b)(i)(II), “The regulation of the placement,  
8 construction, and modification of personal wireless service facilities by any State or local  
9 government of instrumentality thereof ... shall not prohibit or have the effect of prohibiting the  
10 provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II).

11 68. Plaintiffs’ have demonstrated that without the proposed facility T-Mobile will  
12 have a significant gap in its personal wireless service coverage in the City of Medina, and on  
13 SR-520 and the Evergreen Floating Bridge.

14 69. There is no existing structure in or near the vicinity of the Proposed Facility that  
15 is both reasonably available and technologically feasible to remedy the significant gaps in  
16 personal wireless service in the area.

17 70. The Proposed Facility is the least intrusive means to remedy that significant gap  
18 and replace the previously permitted wireless facility.

19 71. The City’s denial of the Application effectively prohibits T-Mobile from  
20 providing reliable wireless service.

21 72. Consequently, the City’s denial of the Application is in violation of, and  
22 preempted by, Section 332(c)(7)(b)(i)(II) of the Communications Act, and should be set aside  
23

1 and enjoined by the Court on that basis. Further, this Court should exercise its power to issue  
2 an order directing the City to approve the Application for the Proposed Facility.

3 **WHEREFORE**, Plaintiffs demand judgment against the City as follows:

4 1. An expedited review of the matters set forth in this Complaint pursuant to 47  
5 U.S.C. § 332(c)(7)(B)(v);

6 2. An injunction ordering that the City grant the Application and thereby approve  
7 the Proposed Facility;

8 3. An injunction directing the City to issue all ancillary approvals and permits  
9 necessary for the construction of the Proposed Facility;

10 4. A judgment that the City's actions and decisions violated the Communications  
11 Act and are therefore void and invalid;

12 5. An award of Plaintiffs' costs, including reasonable attorneys' fees; and

13 7. Such other and further relief as the Court may deem just and proper.

14 Dated: September 22, 2014

Respectfully submitted,

16 /s/ Linda Atkins

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COMPLAINT FOR DECLARATORY &  
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